



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

October 15, 1998
AO-98-23

Dean Cook
Committee To Elect Dean Cook
P.O. Box 2610
Boston, MA 02208

Re: Invitational Candidate Debates

Dear Mr. Cook:

This letter is in response to your October 8, 1998 request for an advisory opinion.

Question: Does a broadcaster who invites some, but not all, “qualified candidates” seeking a particular office to participate in a debate make an in-kind contribution to the invited candidates?

Answer: No.

Facts: A group of broadcasters are sponsoring debates between two of the three candidates for Governor seeking election on November 3, 1998. In your letter you state that the broadcasters invited only the Democratic and Republican candidates for Governor to participate in the debates. You are the Libertarian candidate for Governor. In response to the invitation, the invited candidates have accepted the broadcasters’ invitation. Attached to your letter requesting an advisory opinion are copies of letters addressed to the general managers of three television stations. In those letters you have requested “an amount or value of broadcast time similar to that afforded the two other candidates” for Governor who have participated or will participate in the debates. If the stations do not provide such broadcast time to you, you suggest that the stations would be making a prohibited in-kind contribution to the other two candidates. Although you are a candidate for Governor, the question you ask would appear to apply to debates between candidates for any office.¹

Discussion: Initially, I note that a broadcaster may exclude a candidate from a debate if exclusion is based on a “reasonable, viewpoint-neutral exercise of journalistic discretion consistent with the First Amendment.” Arkansas Educational Television Commission v. Forbes 140 L Ed 2d 875, 890 (1998) (Public television station could exclude an independent candidate from a planned televised debate since (1) the debate was a nonpublic forum with selective access for individual speakers and (2) the exclusion was reasonable and not based upon objections to the candidate’s views.)

¹ Although we do not usually issue advisory opinions that may relate to actions that have already occurred, we do so here to provide general and timely guidance to all candidates on the question that you have posed.

The campaign finance law provides that a media organization may “make time or space available to a qualified candidate at no cost or at reduced cost for the purpose of presentation of the **candidate’s own political advertising**” subject to provisions regarding equal treatment and disclosure. See M.G.L. c. 55, s. 8A. Section 8A defines a media organization as any “corporation, partnership or trust which owns or controls a television station, . . . a radio station . . . or a newspaper. . .” A qualified candidate is defined by section 8A as “any candidate who qualifies to have his name appear on the ballot at an election . . .”

For purposes of this opinion, I assume, as you appear to do in your question, that the broadcasters involved are media organizations. I also take notice of the fact that the Democratic, Republican and Libertarian candidates for Governor and various other statewide offices are all qualified candidates for purposes of section 8A. The issue for this office is, therefore, simply one of statutory interpretation.

By its terms, section 8A applies to a “candidate’s own political advertising.” Since neither the relevant statute nor regulation define the term “advertising,” I look to the common or ordinary meaning or those words. “Advertising” is defined as “the activity of attracting public attention to a product or business, as by paid announcements in print or on the air.” To debate, on the other hand, is “to engage in an argument by discussing opposing points.” See The American Heritage College Dictionary, Third Edition, 1997. The fundamental distinction between the two is the control of content. *While a candidate controls the content of his or her paid advertising, a candidate does not control the content of a debate.* A candidate who agrees to participate in an invitational debate may have some control over the debate’s format or the topics to be covered during the debate. The candidate does not, however, have control over the specific questions that may be asked or his or her opponent’s answers or responses.

In conclusion, a debate is not a political advertisement. Therefore, a media organization does not make an in-kind contribution to a candidate because the organization invites some but not all qualified candidates seeking the same office to participate in a televised debate.

This opinion is issued solely within the context of the campaign finance law and is provided on the basis of representations in your letter and the assumptions set forth herein. Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Michael J. Sullivan
Director